DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO./ADDRESS

WB/ 11/0133/CLP

21 West Avenue
Worthing

DESCRIPTION OF DEVELOPMENT

Application for a Lawful Development Certificate for a proposed detached garage.

The works are shown in the submitted plan and comprise a double garage sited between 2 and 6 metres to the west of the back edge of the pavement of West Avenue. It faces south and appears to be served by an existing vehicular access. It is set off the boundary with the neighbour to the north by 2 metres and the neighbour to the south by 12 metres and sits to the east of the parent house by 5 metres. It measures 7.16 metres deep; and 5.8 metres wide with a hipped roof 3.7 metres to the ridge and 2 metres to the eaves. There are no openings other than the two garage doors. Facing materials are not specified. Details of the parent house are shown in the previous applications (WB/09/0176/FULL; WB/09/0672/FULL and WB/10/0677/FULL).

DATE OF SITE VISIT: 15.3.11

NEIGHBOURS CHECKED : Y / ~~N~~

ADDITIONAL NEIGHBOUR NOTIFICATIONS (LIST ADDRESSES):

SITE AND SURROUNDINGS:

The property which is the subject of this application is a large interwar detached house in a substantial verdant garden set in a low density attractive residential suburb of detached houses of varying designs and mainly from this period with some more modern infill. The house has a hipped roof and its main entrance is on the south elevation. The house is set back between 12 and 20 metres from West Avenue with a lawned front (east) garden and deep rear garden (west). It is served by two vehicular accesses at each end of its road frontage. The southern access leads to a garage sited on its southern boundary which faces the road.

The house is not listed nor in a Conservation Area nor UNESCO site .

RELEVANT PLANNING HISTORY:

Application Number	Development Description	Decision	Decision Date	Appeal Decision	Appeal Decision Date
09/0176/FULL	Ground floor side (north) and rear extension and new enlarged detached garage to south.	WITHDRAWN	20-04-2009		
09/0672/FULL	Ground floor side (north) and rear extension and new enlarged detached garage (resubmission of withdrawn application WB/09/0176/FULL)	APPLICATION REFUSE	19-10-2009		
10/0677/FULL	Demolition of existing conservatory and outbuilding and construction of a side and rear single storey extension to provide a garage, utility room and enlarged lounge/dining room.	GRANT CONDITIONAL CONSENT	11-10-2010		
11/0133/CLP	Application for a Lawful Development Certificate for a proposed detached garage.	PENDING			
94/0166	FIRST FLOOR EXTENSION AT REAR : 21 WEST AVENUE	APPROVED WITH CONDITIONS	26-04-1994		

(REPRESENTATIONS AND RELEVANT CONSULTATION RESPONSES :

None.

HUMAN RIGHTS:

Article 8 (Right to Respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application and have been duly considered.

PLANNING ASSESSMENT:

The test for any such Certificate of Lawfulness is whether on the balance of probability, the proposal is lawful with the onus on the applicant to demonstrate this to the satisfaction of the Local Planning Authority.

The principal issues raised by this proposal are:-

- Is the proposal development ?
- Is the proposal permitted development by virtue of the GPDO, taking into account any tolerances which may have been exhausted?

Is the proposal development ?

The proposal involves operational development as defined in S. 55 of the Town and Country Planning Act 1990.

Is the proposal permitted development by virtue of the GPDO, taking into account any tolerances which may have been exhausted?

The property is a single family dwelling house, which is a C3 use and it is not listed, nor in a Conservation Area. The proposal falls to be assessed under Class E of the

General Permitted Development Order 1995 as Amended Town and Country Planning Act 190 As Amended.

This states that;

Class E

Permitted development

E. *The provision within the curtilage of the dwellinghouse of—*

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

The proposal is assessed against the relevant restrictions below;

Development not permitted

E.1 *Development is not permitted by Class E if—*

(a) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse); Not breached as a very large front and rear garden would remain undeveloped.

(b) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

The General Permitted Development Order does not define a principal elevation but the Technical Guidance issued by the DCLG in August 2010 comments as follows:

The guidance on Class A permitted developments - section (d) - describes what will be the principal elevation of a house.

This is as follows:

In most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation (for example, on a corner plot), a view will need to be taken as to which of these forms the principal elevation.

A highway will usually include public roads (whether adopted or not) as well as public footpaths and bridleways, but would not include private driveways. The extent to which an elevation of a house fronts a highway will depend on factors such as:
(i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not be fronting a highway;
(ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to 'front' the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.

It goes on as follows:

'Forward of a wall forming the principal elevation' means that development is not permitted under Class E in any area in front of the principal elevation of a house. It also prevents permitted development anywhere in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house.

Where the principal elevation comprises more than one wall facing in the same direction, all such walls will form part of the principal elevation and the line for determining what constitutes 'extends beyond a wall' will follow these walls:

Appeal decisions by Inspectors also provide guidance on what may or may not constitute "a principal elevation". These are extensive and contain considerable guidance, some of which is supportive of the DCLG guidance and some of which contradicts this. What is apparent is the need for a case by case approach on the facts of the case.

In the case of the current application, there is some doubt as to what constitutes the principal elevation even in terms of the scant DCLG guidance. The east elevation clearly faces the highway but the south elevation contains the main pedestrian entrance.

Architecturally, there is also some uncertainty. The building design, particularly its orientation and fenestration and function of the rooms served by openings and elaborateness of the architectural features and windows can be important indicators of the importance of an elevation and hence claim to principal status.

The south elevation contains the porch but only one window at ground floor level which is directly orientated south and which serves a habitable room – in this case the lounge. Moreover, this window is modest in size , the larger and principal windows of the lounge actually face west to the main garden. The other window is small and serves the porch and hall. At first floor level again there is only one window directly orientated south which serves a habitable room – a bedroom. The small oriel widow only serves a landing. The south facing widows simply look on to the nearby detached garage and the flank elevation of the neighbouring house to the south, though some oblique views from the street are possible. The gable in the south elevation is an important feature for sure but the asymmetry of the massing, form and detailing in this elevation and the building set back and remoteness from the street and allied views detracts from any value as a centering element in the composition of this elevation.

The east elevation also contains one window at ground floor which is directly orientated east and serves a pool room. This is large and prominent. At first floor

level an equally large widow serves a bedroom. They look onto the forecourt lawn and the street- the public face of the building.

The south west and south east corners of the house are actually chamfered. The south east chamfer contains a two storey projecting bay or turret serving a lounge at ground floor and bedroom at first floor. The south west chamfer incorporates just the one bay at first floor level and serves a bedroom. The south east turret is perhaps the house's strongest feature viewed from the street and its extensive glazing, geometric form and projection lend it particular prominence and significance. From the street it reads clearly as part of the east elevation, especially with the pronounced curve in the road at this point and compositionally balances the large windows in the remainder of the east elevation and lends the elevation cohesion and integrity. This arrangement lens the parent house a strong orientation to the east.

The property's two vehicular accesses (which are also the only pedestrian accesses) come directly off the east side of curtilage and street. The west garden is by far the largest of the garden areas and also the most private, being shielded from the street by the house itself. Its main access is from the west elevation of the house via the lounge and conservatory. In function and character it is very much a "back garden" which abuts functionally and in terms of design "the back of the house"- ie the west elevation.

The north elevation is the least elaborate elevation of all architecturally and very much serves as a subordinate side elevation, especially given its proximity to the north boundary of the plot.

These factors tend to support the view that the east elevation has as strong a claim, if not stronger claim than the south elevation, to be the front of the house and a/the principal elevation in view of its appearance, function and relationship to the street and public realm. This view is supported by the applicants' own classification of the elevations of the house in recent earlier applications for domestic extensions where the east elevation is clearly labeled as the front; the south and north elevations as the sides and the west elevation as the rear, as (WB/09/0176/FULL; WB/09/0672/FULL and WB/10/0677/FULL- details of which are appended to this report).

Quite apart from this, there is extensive appeal precedent to indicate that the elevation accommodating the front entrance may not be the principal elevation and in some cases there may legitimately be two principal elevations, notwithstanding DCLG guidance. Reference is drawn here to just two of the most recent cases for convenience:

25 February 2011: Appeal Ref: APP/C3430/X/10/2138691
Lock Cottage, Long Street, Wheaton Aston, Stafford, Staffordshire
ST19 9NF: Inspector Ahsan U Ghafoor BSc (Hons) MA MRTPI

17 January 2011 – 12 St Andrews Road, London, W3 7NE: Planning Inspectorate Reference: APP/A5270/X/10/2137475 Inspector: David Murray BA (Hons) DMS MRTPI, London Borough of Ealing Reference: PP/2010/1863.

Copies of the decision notices are enclosed.

There is therefore serious doubt as to whether the south elevation is the principal elevation or exclusively the principal elevation and correspondingly a cogent case for the east elevation being a/the principal elevation. As the proposed garage stands in

front of (ie forward of) the east elevation, it has not been demonstrated that the proposal does not breach this requirement of the General Permitted Development Order to enjoy Permitted Development rights.

(c) the building would have more than one storey; This is not breached

(d) the height of the building, enclosure or container would exceed—

(i) 4 metres in the case of a building with a dual-pitched roof, This is not breached

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, This is not breached ;or

(iii) 3 metres in any other case; This is not breached

(e) the height of the eaves of the building would exceed 2.5 metres; This is not breached

(f) the building, enclosure, pool or container would be situated within the curtilage of a listed building; This is not breached

(g) *it would include the construction or provision of a veranda, balcony or raised platform*; This is not breached

(h) it relates to a dwelling or a microwave antenna; or This is not breached

(i) the capacity of the container would exceed 3,500 litres. This is not breached

E.2 *In the case of any land within the curtilage of the dwellinghouse which is within—*

(a) a World Heritage Site,

(b) a National Park,

(c) an area of outstanding natural beauty, or

(d) the Broads,

development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

This is not breached

E.3 *In the case of any land within the curtilage of the dwellinghouse which is article 1(5) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.*

This is not breached

Interpretation of Class E

E.4 *For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.*

RECOMMENDATION:

Do not issue Certificate on the basis that ~~it has not been demonstrated that~~ the proposed garage ~~does not lie~~ [is] forward of the principal elevation of the original dwellinghouse and therefore the proposal is not Permitted Development under Schedule, Article 3, Part 1, Class E .1(b) of the General Permitted Development Order 1995 as Amended Town and Country Planning Act 190 As Amended.

IS RECOMMENDATION CONTRARY TO LETTER(S) OF REPRESENTATION?
Y / ~~N~~

DELEGATED

Case Officer
sign.....[redacted].....Date.....12/4/11.....

Authorising Officer
sign.....[redacted].....Date.....12/4/2011.....